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## SOME REFLECTIONS ON THE CABILDO AS AN INSTITUTION<sup>1</sup>

At the outset, it should be stated that this paper is based upon limited source materials and further that, with reference to some of the phases of the subject treated, many of the available materials were incomplete. For the Spanish American *cabildo*, the writer had the *Actas*, *Acuerdos*, or municipal archives, certain *expedientes* and memorials of the cities of Buenos Aires, Santiago de Chile, Montevideo, Córdoba, Tucuman, Asunción, and some isolated documents of Havana, New Orleans, Mexico City, Jujuy, Salta, and Lima.<sup>2</sup> With such restricted opportunities for investigation, the vague title of the paper may perhaps have a certain pertinence. Properly, therefore, it may be said that this article is concerned with the *cabildo* of southern South America; and that, within the field of this limitation, the writer attempts a survey of opinion, the statement of impressions and reflections rather than conclusions, in the hope that the results may be suggestive.

The municipality of Spain and the Spanish colonies, whatever the legal form it may have been constituted under, has occupied

<sup>1</sup> A paper read at the Conference on Hispanic-American History at St. Louis, December, 1921, at the annual meeting of the American Historical Association.

<sup>2</sup> The printed titles of the official records of the *cabildos* vary as, for example, *Actas del Cabildo de Santiago* (from *Colección de Historiadores de Chile*. Edited by J. T. Medina); *Acuerdos del Extinguido Cabildo de Buenos Aires*; *Libro primero de Cabildos de Lima*; *Actas capitulares de Salta*; *Archivo Municipal de Cordoba*; etc.

and continues to occupy a large place in the literature of institutions and of political theory. Many writers of the older group like Hevía, Camilo Borrelo, Castillo de Bobadilla, Solórzano, and many others exhaustively examined the government of the city; so, likewise, have the other publicists, old and modern, like Pulgar, Bové, Hinojosa, Marquis de Pidal, Sacristan y Martínez, Puyol y Alonso, and more, too numerous to enumerate or to classify here, written on the various phases of municipal life in Spain. Among the modern writers of South America, who have attempted the interpretation of the cabildo, one might mention in an introductory way Sarmiento, Mitre, Alberdi, Bauza, Lastarria, Barros Arana, Miguel Luis Amunátegui, V. F. and L. V. López, Francisco and José M. Ramos Mejía, Juan A. García, Cárcano, Del Valle, Frias, Trelles, Montes de Oca, Lorente, and Ricardo Levene.<sup>3</sup> The cabildo, as an institution associated with the city, has been considered from many points of view. First, its

<sup>3</sup> J. de Solórzano y Pereyra, *Política Indiana*, t. II. Lib. 5, Ch. I, pp. 251-260. He cites as authorities, among others, Hevía, Lanceloto, Avendaño, Baldo, Azevedo, Matienzo, Augustín Caputo. Castillo de Bobadilla, *Política para Corregidores*; A. Sacristán y Martínez, *Municipalidades de Castilla y Leon*; E. de Hinojosa, *Historia general del Derecho Español* (and other works by this great scholar); J. Puyol y Alonso, *Las Hermandades de Castilla y León*; P. J. Pidal, *Lecciones sobre la historia del gobierno y Legislación de España*; J. Gounon-Loubens, *Essais sur l'administration de la Castille au XVI<sup>e</sup> siècle*. There are numerous works on particular cities as O. de Zuñiga, J. Matute y Gaviria, and N. Tenorio y Cerero on Sevilla; E. Pérez y Aguado on Madrid; D. Colmenares on Segovia; M. Villar y Macias on Salamanca. For other bibliographical guidance, see Vol. IV. of R. Altamira y Crevea, *Historia de España y de la Civilización Española*, pp. 587-672. For the South American publicists: J. B. Alberdi, *Del Gobierno en Sud América* (t. IV. *Escritos Póstumos*); ———, *Estudios Económicos*, (Vol. I. *Obras Póstumas*); ———, *Elementos del Derecho Público Provincial*; D. F. Sarmiento, *Conflicto y armonías de las razas en América*; B. Mitre, *Historia de Belgrano*; F. Bauza, *Historia de la dominación española en el Uruguay*; D. Barros Arana, *Historia general de Chile*; M. L. Amunátegui, *Los precursores de la independencia de Chile* ———, *El Cabildo de Santiago*; L. V. López, *Lecciones de historia argentina*; F. Ramos Mejía, *El federalismo argentino*; J. M. Ramos Mejía, *Las Multitudes Argentinas*; J. A. García, *La Ciudad Indiana*; C. O. Bunge, *Nuestra América*; A. Del Valle, *Nociones del Derecho constitucional*, M. A. Montes de Oca, *Cabildos Coloniales* (La biblioteca, 1897); ———, *Cuestiones constitucionales*; R. Levene, *Lecturas históricas argentinas*; ———, *Los Orígenes de la democracia argentina*; J. Gil Fortoul, *Historia constitucional de Venezuela*; S. Lorente, *Historia de la conquista del Perú*; J. Carrillo, *Apuntes de la Historia civil de Jujuy*; V. G. Quesada, *La Provincia Corrientes*.

history as an institution with its roots reaching back through the centuries to Rome, as some claim, has been traced. Second, its governmental structure has been minutely examined. Third, it has been regarded as an example of the projection, the transplantation, of a fundamental Spanish institution in the Americas. Fourth, it has been presented and considered from the points of view of political theory, philosophy, and sociology. Fifth, much thought has been devoted to it in an effort to measure its influence and define its place in the perpetuation of Spanish colonial institutions in the later political life of Hispanic America. Sixth, the cabildo had a variegated set of functions to perform which, even on cursory examination, may be analyzed as political, economic, religious, and social, and these aspects of its activity have been studied. However complete and generally accepted as authentic the information about it as an institution of Spain and the Americas may have been, the last four fields of inquiry have produced diversity of opinion enough. It may be said with evident truth that the Spanish American cabildo has become a subject of controversy. Schools of opinion, if they may be so described, have developed respecting it which may be roughly divided into three groups. First, those who have written favorably, even speculatively, about it, regarding it as an institution of power, as a training school for future democracy, as the sole institution which in any real sense or degree was independent of imperial control—commending in this connection the representative elements in its composition and the communal spirit often manifest in its actions—and finally as a basis of later federalism, in that, according to one writer, it was an outgrowth of the stubborn individualism, the intransigent particularism, of the Spanish people.<sup>4</sup> Federalism would, according to this view, be a native product, evolving naturally from instinctive, inherited, and tenaciously persistent habits of thought; instead of being, as others have seemed to urge, an imported theory of government, introduced artificially by way of imitation and founded, therefore, by no means, upon the *geistige innigkeit* of the people. The following taken from Antonio Zinny partially represents this view:

<sup>4</sup> F. Ramos Mejía, *El Federalismo Argentino*, p. 173.

La institución de municipalidades o ayuntamientos era la mayor garantía de la seguridad individual de los habitantes y su recta administración. Los Cabildos, compuestos de los regidores, alcaldes, y otros oficios, eran asambleas populares que reunían el ejercicio del gobierno interior, la policía, la administración de justicia en los casos ordinarios, el manejo de los fondos municipales y otras muchas y importantes facultades; de manera que sus atribuciones y prerrogativas eran muy vastas y aún superiores a los mismos ayuntamientos de la península, de donde había sido tomada toda aquella forma de gobierno.

Reconocidos por el pueblo como sus legítimos representantes, los Cabildos, en todas ocasiones, tomaban con empeño y decisión la defensa de sus personas y la protección de sus intereses; así, en la guerra de la independencia fueron los primeros en desconocer la autoridad real, abrogándose el poder supremo.<sup>5</sup>

This attitude of endorsement and favor is even more strongly expressed in the *Elementos del Derecho Público Provincial* of Juan Bautista Alberdi.

Antes de la proclamación de la república soberanía del pueblo existía en Sud América como hecho y como principio en el sistema municipal que nos había dado la España. El pueblo intervenía entonces mas que hoy en la administración pública de los negocios civiles y económicos. El pueblo elegía los jueces de lo criminal y civil en primera instancia; elegía los funcionarios que tenían á su cargo la policía de seguridad, el orden público, la instrucción primaria, los establecimientos de beneficencia y de caridad, el fomento de la industria y del comercio. El pueblo tenía bienes y rentas propios para pagar esos funcionarios en que nada tenía que hacer el gobierno político. De esto modo la política y al administración estaban separadas: la política pertenecía al gobierno y la administración al pueblo inmediatamente. . . .

Secondly, there have been jurists and political scientists who have written disparagingly of the cabildo as of weakness, rather than of strength; who have held it to have been oligarchical, rather than representative and democratic in composition; who have denied the validity of its pretensions as a school for future

<sup>5</sup> Antonio Zinny, *Historia de los Gobernadores de las Provincias Argentinas*, I. pp. 110-111.

self-government; who have ridiculed its communal spirit; who have been skeptical of the claim that necessarily it was a basis of federalism. It may be considered that Professor José Ingenieros summarizes this opinion in the following:

El Cabildo colonial ha sido objeto de copiosas literaturas apologéticas, cuya ilegitimidad proviene de confundirlo con el municipio democrático, tal como lo concibe el derecho político moderno. Su legislación engañó a mucho, incluso a Alberdi; su funcionamiento efectivo entrevisto por López, fué revelador para del Valle, cuyas conclusiones han sido confirmadas por los que supieron preferir los hechos a las ficciones jurídicas.

Reducida al mero de las oligarquías municipales, la vida política de los Cabildos fué la única propia de las colonias durante de los tres siglos. ¿Que participación tuvieron en ella los nativos? Al principio, ninguna. Mas tarde, los descendientes de españoles fueron admitidos a formar parte de ellos; pero estos *españoles nativos* lo hacían en calidad de españoles y nunca como representantes de la masa popular criolla, que los consideraba tan *godos* como a los peninsulares . . . la ausencia de oportunidades hizo imposible esa educación para el gobierno que sólo puede adquirirse en la práctica del gobierno mismo. . . . La ausencia de ideales y de educación política durante el régimen colonial produjo la llamada anarquía, que fué una simple regresión al feudalismo ante la caducidad de la centralización monárquica.<sup>6</sup>

Thirdly, the group, which we may call the sociologists, have given attention to the social phases of the cabildo's activities, upon which some comment will presently be made. In order to arrive at any judgment, by way of tentative evaluation, upon these opinions and theories, it seems necessary briefly to survey the familiar ground of the cabildo as a political institution.

In the very beginning there is the difficulty of words and the necessity for certain definitions. In the minutes of the cabildos, one may frequently read such entries as this which is taken at random from the *Actas del Cabildo de Santiago*: "In the loyal city of Santiago de Chile . . . this day were joined together in its cabildo and ayuntamiento, as has been the custom, the

<sup>6</sup> José Ingenieros, *La Evolución de las Ideas Argentinas*, Lib. I, *La Revolución*, pp. 39-41.

señores Justicia y Regimiento of this republic . . .". etc. Here cabildo and ayuntamiento are employed in a complementary sense or even synonymously, as seems to have been the custom. The term cabildo was used not only to represent institutionally the *Concejo de la municipalidad*, but with respect to certain other organizations such as the meetings of the *capitulares* of the chapter of the cathedral. There were cabildos also of organizations which had objects of a social, recreational, charitable, fiduciary, and pious nature, such as the negro cabildos of Cuba. Mr. Fernando Ortiz thinks the word cabildo was originally applied to the ecclesiastical assembly, whereas ayuntamiento referred to the municipal.<sup>7</sup> The cabildo of our interest, of course, is that fundamental institution of municipal government, the town council.<sup>8</sup>

The scope of this paper does not permit a detailed presentation of the cabildo of the Spanish cities, nor of the charters (*fueros*), nor of the studies and interpretations even of such briefer works as those of Sacristán y Martínez, Salvá, Danvila y Collado, Matute y Gaviria, or Altamira.<sup>9</sup> We need not at this point enter into the differences between the royal city and seignorial city nor into the rights, powers, and services of the frontier *villa*, nor into the system of gradation dependent upon size, type of religious establishment, or relation to the royal government. One may with safety say, perhaps, that in the foundation of the Spanish municipality—with its solemn ceremonial, with the selection of a patron saint, with erection of an appropriate ecclesiastical establishment, with the granting of a charter or the promulgation of the *Acta de Fundación*, with the institution of a political corporation on the place, with the adoption of a town

<sup>7</sup> Fernando Ortiz, *Los Cabildos Afrocubanos* (in *Revista Bimestre Cubana*, XVI. No. I), pp. 8–10.; cf. D. Velez Sarsfield, *Relaciones del Estado con la Iglesia*, pp. 209–216; Solórzano, *Política Indiana*, II; Lib. 4, Ch. 13.

<sup>8</sup> The term cabildo was also applied to the building which housed the *concejo* and its documents; likewise ayuntamiento sometimes connoted the municipal district as well as the government. The term "Cabildo secular" is sometimes used for purposes of distinction.

<sup>9</sup> For excellent treatment, see R. B. Merriman, *The Rise of the Spanish Empire in the Old World and in the New*, I. 183–197, 221 ff., 473, 488–497; II. 144–152, 186.

plan, and with the constitution of a little republic—the people, the government, and the church combined to give to the act a peculiar dignity. There were differences in the organization, in the charters granted, in the composition of the municipal bodies, in the relative degrees of independence, in exemptions from duties and taxes, and in modes of procedure arising from differences in the policies and practices of the several governments of medieval Spain, and from the greatly varied customs of the complex ethnic groups and geographic sections of the peninsula. Much of the historical and juristic literature of Spain deals with the institutional and customary differences developed among these groups and sections. Much of it is devoted to a statement of the peculiarities of, or to a comparison of the differences between, Castile, the Basque areas, the Catalan settlements, etc. The cities, new and old, won privileges, in varying degree, during the wars of reconquest against the Mohammedans and in the bitter feudal struggles between the kings and nobles in which they gave aid to one or the other side as their interests demanded. The history of the evolution, growth, and ultimate decline of the cities taking place before the period of discoveries was summarized by Escriche, who marked out three stages.<sup>10</sup> The period of the eleventh and twelfth centuries as that of the founding of many “little republics” and of the winning of privileges, during which time the membership of the cabildos was generally determined by popular election. “El Consejo”, wrote Sacristán y Martínez, “era una pequeña república regida por sus leyes propias y gobernada por sus magistrados particulares”.<sup>11</sup> In this sense it constituted a sort of *regnum in regno*.<sup>12</sup> Second, the thirteenth and fourteenth centuries as a time of many changes when some secured municipal office by election of the people, some by grants in perpetuity, some by election through co-optation, some by lot, some by appointment of the *audiencia*, the incumbent cabildos merely nominating.

<sup>10</sup> Escriche, *Diccionario razonado de legislación y jurisprudencia*.

<sup>11</sup> *Municipalidades de Castilla y León*, p. 54. Quoted by F. Ramos Mejía, *op. cit.*, 83.

<sup>12</sup> Merriman, *op. cit.*, I, 490.



Third, the fifteenth century as a time of royal encroachment, the kings sending out *corregidores* and *alcaldes mayores*, who more or less consistently usurped powers of the cabildos. Writing of the closing years of the fifteenth century, during the reign of the Catholic Monarchs, Professor Merriman remarks, "It was in this reign that the *pesquisidores*, *veedores*, and *corregidores* for the first time really came into their own. . . . Beginning in the year 1480, they (the *corregidores*) were sent for the first time, to all the Castilian cities without exception, so that the institution was henceforth definitely extended over the entire realm. . . . The *corregidores* were, in fact, omniscient servants of an absolute king. Nothing less than this would suffice if they were to make head against the tremendous current of Spanish separatism which had rolled on unchecked for centuries".<sup>13</sup> It may be added that a great blow in the interest of centralization was struck when the *comuneros* were defeated at the battle of Villalar in 1521 and the government of Charles was left free to make royal despotism effective.<sup>14</sup> The final ruin of the municipalities, it has been held, came with the accession of the French Bourbons in the eighteenth century. The golden age of city home rule—the twelfth, thirteenth, and fourteenth centuries—was precisely the time when the influences of sectionalism stamped upon Spanish character its seemingly ineradicable individualism. Despite this commonly accepted idea of separatism, the view that the Spanish cities were "distinct and self-sufficing" units, there seems to have been some features of similarity. Altamira has shown that as early as Alfonso X. there were certain type-*fueros*—at least they might be so called in view of the similarities in their governmental provisions—such as Burgos, Valladolid, Soria, Avila, Simancas.<sup>15</sup> From a consideration of the *fueros* of Cuenca, Oviedo, Lugo, Baeza, and Sepúlveda, García notes the following principles and general guaranties: 1. Equality before the law. 2. Inviolability of domicile. 3. Administration of justice by judges who were residents and who were elected by the people

<sup>13</sup> *Ibid.*, II. 147, 148, 149.

<sup>14</sup> Cf. F. Ramos Mejía, *op. cit.*, pp 95-96.

<sup>15</sup> Altamira, *Historia de España*, II. 60-65, 76-77.

or the council. 4. Participation of the people in public affairs. 5. Responsibility of public functionaries.<sup>16</sup> Further, the cities were strengthened by having that series of organizations known as the *Santa Hermandad* to fight their battles, by the formation of certain town leagues, and by representation in the Cortes.

As Sarmiento once wrote, the Spanish brought to this country no institution so old, none so rooted in their hearts, as the *cabildo*.<sup>17</sup> Early in the history of the *Isla Española*, 1507, the towns "petitioned the king for the same privileges and forms of government as were possessed by the towns of Spain. The request was granted, and municipal rights were bestowed upon fourteen towns".<sup>18</sup> There was in all of this what appears to have been a conscious effort to transplant the institutions of Spain in the New World. This was true not only of the colonists, but of the imperial government then and later for such a consciousness would seem to have been the stimulus of the following law:

Porque siendo de una corona los reinos de Castilla y de las Indias, las leyes y órden de gobierno de los unos y de los otros, deben ser lo mas semejantes y conformes que ser pueda: los de nuestro consejo en las leyes y establecimientos que para aquellos estados ordenaren, procuren reducir la forma y manera del gobierno de ellos al estilo y órden con que son regidos y gobernados los reinos de Castilla y de León en cuanto hubiere lugar y permitiere la diversidad y diferencia de las tierras y naciones.<sup>19</sup>

The *capitulaciones* of Pizarro will show, it is thought, that the procedural and governmental forms developed in *Española* were prescribed for the conquerors and *pobladores* of the South American continent, as may be inferred from the injunction, "conforme á lo que se ha hecho e hace en la dicha isla Española".<sup>20</sup>

<sup>16</sup> García, *La Ciudad Indiana*, pp. 159-161. Cf. Bernard Moses, *The Spanish Dependencies in South America*, II. 371.

<sup>17</sup> Sarmiento, *El conflicto y armonias de las razas*, p. 134.

<sup>18</sup> C. H. Cunningham, *The Audiencia in the Spanish Colonies*, p. 10.

<sup>19</sup> *Recopilación de Leyes de los Reinos de Indias*, Lib. 2, tit. 2, ley 13. 1636. This law was translated by Dr. Cunningham, *op. cit.*

<sup>20</sup> *Capitulación* of July 26, 1529. Cited by Moses, *op. cit.*, I. 161.

Three considerations, herein regarded as tenable, should be kept in mind in contemplating this transplantation of municipal institutions. It has been rightly held, I think, that many Spanish cities were founded and given special rights in the reconquest of Spain from the Mohammedans; so, it is claimed, cities were founded and given rights in the conquest of America from the Indians. Secondly, the colonization of the Americas was under way before the forces of centralization in Spain had destroyed municipal autonomy there. The following observation of Professor Merriman might be quoted in support of such a contention: "Decentralization, . . . , continued to be the salient feature of the life of the peninsula, even after the advent of despotism had crushed the nobles and sapped the vitality of the concejos. The ancient forms remained, though the animating spirit had fled".<sup>21</sup> The dead and dying city life of Spain would seem, under the circumstances of colonization already mentioned, to have had a sort of renaissance in America. Thirdly, it may be supposed that wherever in America there should be any considerable grouping of the natives and former citizens of any Spanish city, or any concentration of members of any one of the Spanish ethnic units, they would seek to import Spanish institutions and culture not only, but that they would endeavor to establish in their new homes the governmental system, the political customs, which their own race and city had had in Spain. The validity of this last consideration, seemingly logical and inevitable, has yet to be fully demonstrated through research.<sup>22</sup>

With this hastily constructed background in mind, we come at last to the cabildo of the Spanish colonies. As is well known, the cities or towns of the New World were classified as "ciudad, villa ó lugar".<sup>23</sup> All cities were to have two *alcaldes ordinarios*, but with reference to the number of *regidores* there does not seem

<sup>21</sup> Merriman, *op. cit.*, II. 149.

<sup>22</sup> Cf. F. Ramos Mejía, *op. cit.*, pp. 178 ff.

<sup>23</sup> O. Garfield Jones, *Local Government in the Spanish Colonies as Provided by the Recopilación de Leyes de los Reynos de Indias* (Southwestern Historical Quarterly, XIX, 1915-1916) 65-90. This excellent digest of the *Recopilación* has been consulted throughout.

to have been any rule rigidly adhered to. In the metropolitan city there were twelve, while in the diocesan or sufragán only eight.<sup>24</sup> In a law of 1523, re-issued in 1568 and 1610, it was ordered that the principal cities should have twelve *regidores*, the *villas* and *pueblos* six. In the small *lugares* and coastwise *rancherías*, there was one *alcalde ordinario* and four *regidores*. In the very earliest days, there seem to have been cases where these officials were popularly elected; but, in general, however, the *adelantado* or the original *poblador* appointed the first set from among the conquistadores.<sup>25</sup> The early irregularity gave way to a system of annual election, on the first of January, when the retiring cabildo elected from among the resident citizens their successors, preferring original settlers and conquerors. With respect to this matter of election, as, indeed, with reference to the delimitation of the cabildo's powers and the administrative regulations concerning the performance of its duties, the king and the Council of the Indies legislated with a "prolix minuteness of details" (*prolija minuosidad*). As to this important matter of election, the history of the cabildo has been made to fall within two periods. That prior to 1620, when the membership in the cabildo was elective; and that subsequent, when the office of *regidor* was offered for sale. So far as I know the office of *alcalde ordinario* was never sold in public auction. Despite the fact that, according to Solórzano, the people had about the election of *regidores* the idea of natural right and despite the fact that this law was not generally enforced, this law has seemed to some writers on the subject to have worked a revolution.<sup>26</sup> About this precious right of election, there were placed certain protections, guarantees, and restrictions. The election was to be free from the intervention of viceroy, governor, and *audiencia*,

<sup>24</sup> *Recopilación*, Lib. 4, tit. 10, ley 1; ley 2. Solórzano, p. 252; Jones, *op. cit.*, 74. For suffrage restrictions, *Recopilación*, Lib. 4, tit. 10, leyes 5 and 6. Solórzano (p. 252) states in connection with this point that the American cabildos were founded "al modo, y forma, que se solia hacer, y practicar en los Reynos de España, antes que se introduxesse el uso de los corregidores, . . ."

<sup>25</sup> Jones, *op. cit.*, 84-85; *Recop.*, Lib. 4, tit. 25, ley 3; tit. 10, ley 3. Cf. E. G. Bourne, *Spain in America*, p. 235; H. H. Bancroft, *History of Mexico*, I, 530.

<sup>26</sup> In the *Recopilación*, libro 4, titles 7-16. Cf. Solórzano, 252.

though the viceroy, captain-general, governor, president, or their representative (*teniente*), was *ex officio* presiding officer over the cabildo, counted the votes, and proclaimed the results.<sup>27</sup> One of these high officials might even annul the election, as was the case in Potosí, in 1603, when Viceroy Velasco dispossessed the *regidores* whose election was alleged to have been effected with great scandal.<sup>28</sup> In case a man thought to be incapable had more votes than one regarded as capable, the latter might be declared elected—a rule especially operative, it has been supposed in the elections of the *alcaldes ordinarios*.<sup>29</sup> Royal officials were expressly forbidden to solicit votes. The law protected the meetings against official intimidation through violence and provided elaborately for the preparation and safe-guarding of the records. These restrictions and protections were necessary, as Solórzano assures us, for some governors and royal officials sought to reduce everything to their will.<sup>30</sup>

*Alcaldes ordinarios* and *regidores* were resident land holders, free from indebtedness to the *real hacienda*, and free from indictment before the inquisition. The *alcalde* was supposed to know how to read and write, though this requirement does not seem to have been enforced.<sup>31</sup> An interval of two years was supposed to elapse before an individual who has served in one of these capacities was re-eligible for choice to either of them, though in a few cases there is evidence that *alcaldes*, one or both, were drawn from out-going *regidores*. During the interval mentioned the *alcaldes* and certain of the *regidores* were required to undergo the *residencia*. During a considerable period, in the city of Santiago de Chile, the members of the cabildo were equally drawn from the respective groups of *encomenderos* or *vecinos* and *moradores*.<sup>32</sup> In view of the social and economic activities of the

<sup>27</sup> *Recop.*, Lib. 4, tit. 9, leyes 7, 10, 12. For an interesting account of an election, see V. G. Quesada, *Crónicas Potosinas*, I, 383 ff.

<sup>28</sup> Solórzano, p. 254.

<sup>29</sup> *Recop.*, Lib. 5, tit. 3, ley 10; also cédula, 1703. Cf. Art. 11 of Ordenanza de Intendentes.

<sup>30</sup> Solórzano, pp. 255–6

<sup>31</sup> *Recop.*, Lib. 5, tit. 3, ley 4.

<sup>32</sup> Cf. Solórzano, p. 253.

cabildo, it is important to take notice that neither the *regidores* nor the *alcaldes* were permitted to have an interest in retail selling establishments, since they had a control over markets, shops, and inns, and since they had power to fix prices at a just rate. The cabildo contained the elective *alcaldes* and *regidores* not only, but on occasion two other classes of members. The government, that is, the crown and its representatives, sometimes appointed men, as a reward for meritorious service, to seats in the cabildo. They became the *regidores perpetuos*, having an equal vote. Then there were *reales oficiales* who had, *ex officio*, membership in it. Thus, in Santiago, in 1603, the cabildo was composed of regularly chosen members, certain *regidores perpetuos*, and a *contador*, a *factor y veedor*, an *alguacil mayor*, and a *depositario general*. From this practice arose the charge that the cabildo could be packed. Some efforts were made in the colonies to reform the electoral procedure. Once in Santiago, the cabildo submitted to the governor the proposition to have one of the *alcaldes ordinarios* elected popularly, which he promptly vetoed.<sup>33</sup> There, also, probably to avoid the pressure that was brought to bear at election times, the cabildo agreed to vote in secret ballot.<sup>34</sup> They resolved also that only those who had been *regidores* were in the future to be elected as *alcaldes*. Such a movement also occurred at Lima in 1620. After the installation of the cabildo, following election, it usually proceeded to elect from its own membership or from the resident citizenry certain administrative officials such as the *alférez real*, the *tesorero de iglesia*, *alcalde de hermandad*, the *juez y tenedor de bienes de difuntos*, the *alcalde de las aguas*, the *fieles ejecutores* (many writers describe these officers as having duties "análogos á las de los ediles cereales del Derecho Romano), the *procurador*, and on occasion others.

As has already been mentioned, the law of 1620, relative to the sale of the offices of the *regimiento*, has been pretty generally assumed to have had a dispiriting effect upon municipal life and ideals. In the opportunity for gain, office-holding having

<sup>33</sup> *Actas del Cabildo de Santiago*, VII. Nov. 28, 1608.

<sup>34</sup> *Ibid.*, p. 116.

been made a business, ideals of duty, patriotism, and good administration were abandoned. In the *Recopilación*, the reasons stated for the change were that inconveniences had been experienced and that the sale of these offices was customary in Castile.<sup>35</sup> It was ordered that in the awarding of the office, after bids had been made in public auction, consideration should be given men of capacity, and, whenever possible, to original settlers and their descendants. In an often quoted passage, Juan A. García says of this policy of selling these offices that it "violated all notions of good order and administration. By selling offices the government admitted implicitly that its affairs were exploitable—that they were articles of commerce. The evil which this tradition has wrought is incredible. It is the root of our political decadence."<sup>36</sup> In another place he remarked, "La práctica abominable de vender los oficios concejiles completó la ruina del sistema municipal." That these offices were sold is true, and probably with something of the effect and influence so forcefully stated by García—especially does this seem to have been the case in Buenos Aires;—but it is also true that the law of 1620 was not always enforced as the following excerpt, wherein an election in 1654 in Santiago was reported with unusual fullness, indicates.

Elección.—En la muy noble y leal ciudad de Santiago de Chile, en primera día del mes de enero de mill y seiscientos y cincuenta y cuatro años, los señores Cabildo, Justicia y Regimiento desta ciudad de Santiago de Chile, estando juntos in su ayuntamiento, como lo han de costumbre, para de elección de alcaldes ordinarios y de cinco regidores, a saber: [there follow names of incumbent cabildo]

Notificación al Cabildo.—Y habiéndose notificado y hecho saber á los dechos señores deste Cabildo un auto proveído por los señores desta Real Audiencia, en que mandan se elijan dos regidores de moradores

<sup>35</sup> *Recop.*, Lib. 8, tit. 20, ley 7. Preamble: Por haberse experimentado los inconvenientes que resultan de darse por elección y suertes los oficios de regidores, conformándonos con la costumbre universal de nuestras Indias, y que se observa en estos reinos de Castilla: . . . Laws had already been enacted in 1522, 1557, 1581, 1594, and 1615 respecting the sale of certain of the local, administrative offices. The income from these sales went to the *real hacienda*.

<sup>36</sup> García, *La Ciudad Indiana*, pp. 169-170.

y tres de vecinos, este año de mill y siescientos y cincuenta y cuatro, y se les dio noticia que elijan en vecinos, como se ordenó y mando el año pasado . . . ; y habiendo cada uno de dichos señores del Cabildo dado un papel que se echó en una salvilla; fueron á abrirlos el señor oidor, el señor Corregidor y los dos señores alcaldes ordinarios.

Salieron electos: por alcalde ordinario de vecinos don — — con catorce votos.

Alcalde ordinario de moradores maestro de campo don — —, con catorce votos.

Regidores de vecinos feudatarios, capitan don — —, con catorce votos.

General don, — —, con trece votos.

Capitan don — —, con catorce votos.

Regidores, de moradores, sargento mayor don — —, con diez votos.

Don — —, con diez votos.<sup>37</sup>

Another phase of the Spanish municipal government in the colonies was the *cabildo abierto* or the town meeting, as it has been called, at which the entire body or a part of the resident citizenry was invited or summoned to attend. They were held to deal popularly with matters and situations unforeseen by the law, to adopt policies in time of crisis, to raise troops, to receive important information and communications, to give notice of new taxes, and for other purposes. Opinion respecting this famous custom—it might perhaps be called an institution itself—will be considered later.

The cabildos did not develop or exercise the same degree of power, though the unfriendly critics do not as a rule make this distinction, considering them all weak. None the less, it appears to the writer as true that some of the cabildos were strong as well as that others were comparatively weak. Many factors entered into this result. Some cities were isolated, having poor facilities of communication, a fact which, according to some, prevented efficient supervision and ready interference; some had a citizenry of particular individualistic assertiveness; some were situated in agricultural areas, which as compared to the mining areas, were neglected by Spain; and some had their political and

<sup>37</sup> *Actas del Cabildo de Santiago*, XIV. 380-381.



social character affected by the ease or difficulty with which the Indians were conquered. Between such extremes of circumstance and nature lie the explanation and causes, partially at least, of strength and weakness. It has already been observed that the powers and duties of the cabildos may be analyzed in general as political, judicial, economic, social, and religious. Two of the members, the *alcaldes ordinarios*, were, of course, judges in civil and criminal cases of first instance; and the cabildo, as a whole, in *camara*, acted as a court in such cases as, under the specifications and regulations laid down in the laws of the Council of the Indies, were taken to it on appeal from the *alcaldes*.<sup>38</sup> On the other hand, as a council, the cabildo legislated for the local needs, subject to the annulment of the higher authorities. For purposes of brevity, the political powers and activities of the cabildo are summarized as follows: 1. It had control of the police and the field of primary correctional justice. 2. It had control of certain public works. 3. It exercised powers of inspection over jails, hospitals, drainage ditches, etc., 4. It initiated certain policies, such as, for instance, the punishment of witchcraft.<sup>39</sup> 5. It admitted and expelled people to and from its citizenship. 6. It was an organ of communication between the people and the royal government, usually in the *cabildo abierto*. 7. Its *sala* was the place for the verification of credentials, the reading and proclamation of commissions, the announcement locally of royal decrees. 8. It had the right of petition and protest to *audiencia*, *Junta Superior*, viceroy, Council of the Indies, and the king. 9. It had partial control of local militia, though this was indefinite and a source of controversy. 10. One of its duties was to contribute to the protection of the frontier. 11. It had a right to appoint *procuradores* to defend its interests.<sup>40</sup> On the death of a governor, one of its members, an *alcalde*, was supposed to succeed to his authority, although this was of little significance, for there was usually a lieutenant to take the gover-

<sup>38</sup> Jones, *op. cit.*, pp. 73-74. *Recop.*, Lib. 5, tit. 12, ley 17; ley 20; and ley 18.

<sup>39</sup> *Actas del Cabildo de Santiago*, 1552 and 1575.

<sup>40</sup> *Recop.*, Lib. 4, tit. 11, leyes 1-5. Del Valle (*Derecho Constitucional*, p. 31) sums up duties as "electorales, deliberantes, administrativas, y contenciosas."

nor's place and, if not, the *audiencia* was likely to grasp the command. Exactly this situation developed in Buenos Aires in 1715, when, lacking a governor, after Colonel Alonso de Arce y Soria, there occurred a three-sided conflict between Bermúdez, nominee of Judge Mutiloa, the cabildo, and Captain Barrancos, the leader of the military.<sup>41</sup> A similar crisis occurred in Caracas in 1675. The cabildo was, in the opinion of its defenders, the medium for the expression of public will in opposition to misrule. There are dramatic instances when the cabildos, singly or in league, led armed resistance to royal officials, in Paraguay, Upper Perú, and New Granada. Also, the cabildos of Buenos Aires, Asunción, Córdoba, Corrientes, Jujuy, Santiago del Estero, Tucuman, and Salta, from time to time, resisted usurpation and illegal military service, denounced misgovernment, and stood staunchly for local rights.<sup>42</sup> Sarmiento makes the cabildo of Córdoba carry on a struggle for liberties covering a period of two centuries.<sup>43</sup> Examples of the resistance of the cabildos to the agents of the royal government may be found in Ramos Mejía, Lozano, Mitre, Funes, Bauza, Lorente, and others. Francisco Ramos Mejía sums up the case for the cabildo in this respect by saying, "Lejos de ser administrativamente serviles, disputaban sus prerrogativas á los gobernadores e iban en ocasiones hasta desconocerlas salvando en otras con su proceder enérgico conflictos de consideración".<sup>44</sup> With respect to these political powers, Andrés Bello wrote:

The metropolitan distrust placed particular merit in depressing and despoiling these bodies of all real importance; but in spite of this prolonged effort which sought to reduce them to a pale shadow of what they were in the first century of the conquest, composed of members in whose election the people had no part, treated harshly by the authorities and at times reviled, it never abdicated the character of representatives of

<sup>41</sup> Zinny, *op. cit.*, I. 42. Cf. J. Gil Fortoul, *Historia Constitucional*, I. 61.

<sup>42</sup> F. Ramos Mejía, *op. cit.*, 185 *et seq.* Trelles in *Revista del Archivo General*, t. II, 228 *et seq.* A. Granillo, *Provincia de Tucuman*; F. Espeche, *La Provincia de Catamarca*; V. G. Quesada, *La Provincia de Corrientes*. R. J. Cárcano, *El Gobierno de Tucuman*.

<sup>43</sup> Sarmiento, *Conflicto y armonías de las razas*, ch. II, especially pp. 152 ff.

<sup>44</sup> F. Ramos Mejía, *op. cit.*, p. 186.

the people and was seen to defend with boldness the interests of the communities on repeated occasions.<sup>45</sup>

Also the following from Bauza:

To the cabildo is due the idea of the representative system and the first glimpse of the division of power. From the time when they took upon themselves the conduct of public affairs, the people observed that not everything depended on the comprehensive authority of the military chief, and, as a consequence, the rudiments of a system of government more complex than the one-man power began to permeate all minds. Soon the exercise of the right of petition before the cabildos became customary, and from this they advanced to the practice of petitioning the governors. The election of members of the corporation, although carried out in an imperfect way succeeded in increasing interest among the citizens, who even if they only contributed to the election as spectators, did not by that fail to show their satisfaction in so far as the act and its result agreed with their views. The conduct of the members of the cabildo will always be a subject for applause, that although authorized during many years to elect their successors, they never nominated such as were traitors to the common interests. Thus, by means of these humble and persecuted corporations, public spirit in Uruguay was born, and the inhabitants created a criterion, in accordance with which power should be exercised for the benefit of all in a regulated, equitable, and beneficent manner.<sup>46</sup>

In addition to the powers claimed as having been practically exercised, there are those that belong to the cabildo as potential. Perhaps the opinion of the cabildo in this respect can be compressed into the statement that should royal government collapse under misfortune or disaster, the cabildo, being a self-perpetuating body, and being close to the people through the *cabildo abierto*, might become the instrumentality of popular sovereignty, and might, as if by common law, come into the legitimate authority of the state.

The powers of the cabildos in economic and social relations may be catalogued as: 1. They administered certain funds,

<sup>45</sup> Andrés Bello, *Obras Completas*, VII.

<sup>46</sup> Bauza, *Historia de la Dominación Española en el Uruguay*, II. 639-640. Passage translated by Professor Moses in his *Spanish Dependencies*, II. 379.

such as the *propios*, *arbitrios*, and the funds of orphans. 2. They had limited powers of taxation, though in general such taxes had to be approved. 3. They made occasional attempts at an educational system. 4. They made regulations for health. 5. They had the duty—and it was a fundamental one for the city—of protecting the food supply. 6. They had the power, though it was most often exercised by the *alcaldes* and one of the *regidores*, of fixing prices on grains, retail commodities, meat, yerba, grease, tallow, etc. They also granted licenses and franchises to establishments dealing in such trades. 7. They sometimes distributed or allotted town lots (*solares*) and sometimes also lands.<sup>47</sup> They granted building licenses. 8. They made certain regulations respecting herds and registered brands. 9. Some of them, like Buenos Aires, interested themselves in seeking to secure mitigation of the restrictive trade system. If one should admit that the cabildos had little sustained contact with viceregal politics and general administrative problems, there remains the field of local affairs, in which its defenders have observed an intense activity. Of this, Levene, in his *Los orígenes de la democracia argentina*, remarks:

Acaso, de los actos y acontecimientos políticos más importantes y generales de la América española, apenas tuvieron un eco en los acuerdos del Cabildo. La alta política y la alta administración superiores, residen en España y América. Pero los intereses pequeños, las necesidades elementales y urgentes, surgidas de las poblaciones mismos y por ello importantes y significativas, eran atendidas por los Cabildos y ni un solo acto militar, económico, político, fué resuelto sin su intervención.<sup>48</sup>

In its ecclesiastical relations, the cabildo participated in church festivals and processions; it had privileged places and seats in the church building; it contributed to the building of the churches and monasteries; it had the right of inspecting certain charitable agencies; and it sometimes controlled a small part of the church patronage. Some writers represent the cabildo as an opponent

<sup>47</sup> Cf. F. Ramos Mejía, pp. 172–173.

<sup>48</sup> Levene, p. 105.

of ecclesiastical pretensions; others have said that its chief function was "á adornir con su presencia las procesiones".

The right and practice of intervention in private business were, of course, inherited from Spain. Springing from the thought, according to García, that all commodities have a just price, that all speculation in supplies is essentially immoral, and that, as it was the imperative duty of the cabildo to see to it that the food supply of the city should be maintained, it was the rightful power to safeguard the public interest by such control and supervision. While the agencies of marketing were under inspection, the producer did not escape scrutiny, especially in the times of scarcity, when—to use modern terms—hoarding and profiteering might thereby be prevented. Thus in a time of famine, all who had wheat, whether of church or state, might be forced to sell it under a kind of law of *maximum*. Nominally they sought a just price, but this often meant a high price scale. Many considerations, other than the law of supply and demand, seem to have entered into this socialistic theory of municipal functions. Many questions of interpretation, of the economic soundness, of the cabildo's disinterestedness, of the finality of its powers, and of its ultimate responsibility might be asked. The laws were inconsistent on this matter as on so many others connected with this subject. Just what was the sphere of the *corregidor*, who had a share in this price-fixing function? The *Recopilación* shows that there was granted to the *alcalde ordinario* a power in his own right, but with him at times a *regidor* was associated. And from time to time the cabildo exercised these powers in *camara*. Here, too, opinions differ on the merits of its interposition, with Levene, for instance, regarding it favorably and García thinking that it defeated its own ends.<sup>49</sup>

We may conclude the statement of the claims of those who affirm that the cabildo was a municipal institution of actual and potential power by quoting again from Ramos Mejía:

En medio del aislamiento en que vivían las ciudades, el Cabildo era la única autoridad popular, la única acción se hacía sentir en las más de

<sup>49</sup> García, *op. cit.*, pp. 101-147; especially, 146-147; cf. his interesting collection of documents in *Abastos de la Ciudad y campaña de Buenos Aires 1773-1809*.

ellas. Se les veía ejercer las funciones más vitales de la ciudad, la seguridad y la alimentación, pues que eran ellos quienes ejercían la policía y la justicia correccional, corrían el abasto, expendición de víveres y granos y administraban los bienes y rentas del común (López, *Historia Argentina*, tomo, I, página, XII), construían hospitales, iglesias y monasterios, hacían paseos y plazas públicas, casas para el Ayuntamiento, fomentaban la defensa de las fronteras, constituyendo así el verdadero gobierno del distrito.<sup>50</sup>

On the other hand, the unfriendly critics have paralleled these alleged elements of strength with ones of weakness, making in final analysis the cabildo the inferior executing agent of orders derived from a superior power. Indeed, writers like Montes de Oca, Del Valle, Juan A. García, and, in a popular sense, Mitre, have held that the elements of strength were illusory, that there has been built up around the cabildo a legend. Whatever the colonial cabildos were in the beginning, it was contended that they declined; and Mitre goes so far as to say that they became the "sombra de la sombra de los antiguos cabildos libres de la madre patria". Amunátegui lists the defects of the cabildo of Santiago as follows: 1. Election by co-optation was undemocratic. 2. Membership was passed in families, thus constituting an oligarchy, there being few new elements, which made the cabildo like a closed room in which the air was renewed but slowly. 3. There was no protection against packing it with royal nominees. 4. The cabildo members could be fined individually and collectively by the governors.<sup>51</sup> They could also on occasion be imprisoned. There was inadequate protection against the encroachment of royal officials. There are instances when the governors attempted and succeeded in foisting their nominees upon the cabildo despite its complaints and the prohibitions of the law as in the famous conflict between the cabildo of Buenos Aires and Governor Valdez Inclán in 1705. As to judicial administration, Solórzano has stated that the *corregidores* rarely

<sup>50</sup> *El Federalismo Argentino*, p. 176.

<sup>51</sup> M. L. Amunátegui, *El Cabildo de Santiago*; cf. Del Valle, *Derecho Constitucional*, pp. 42-43.

permitted the *alcaldes ordinarios* to settle a criminal case.<sup>52</sup> In conflicts with the governors, the cabildos were likely to find the military on the official side. The colonial *Hermandad* was certainly only "the pale shadow" of the Spanish model. Then there was little co-operation between the cities. That is said without discounting the *comunero* movements of the eighteenth century or the two Salta congresses of 1767 and 1776, in which the cabildos were represented.<sup>53</sup> García contended that the instances of the real exercise of power by the cabildo and its opportunities for that sort of action were abnormal arising either from the death or the delinquency of officials. An institution should be judged, he held, upon the possession of powers under ordinary circumstances rather than under extraordinary developments. Again, it is held that the isolation of some cabildos might work, and did work, in favor of the isolated royal officials and contributed to the enhancement of his powers as well as those of the cabildo. Further, that the cabildos were uniformly weak in resources, that the income from the *propios* was small and its appropriation largely prescribed, that all new taxes had to receive royal approval, that its resources had to a considerable extent to be expended unproductively in church festivals and political celebrations.<sup>54</sup> Some have held that the cabildos were crushed between the royal government on the one side and the church on the other. The conflicts of the cabildo with the church were often reduced to matters of formality and etiquette, as has been shown in the interesting and amusing article of Alberto Jones Brown, *Algunos documentos históricos sobre un conflicto eclesiástico del año 1783*.<sup>55</sup> The *cabildo abierto* has also been attacked. Of it, García, in *La ciudad Indiana*, wrote: "At first view, by the euphony of the name, it appears that one has come upon a popular assembly, convoked in grave crises, in order to resolve after the ancient and classic manner the affairs of the city. Unfortunately all this does not spring from a simple illusion caused

<sup>52</sup> Solórzano, *op. cit.*, pp. 254, 257. Cf. *Recopilación*, Lib. 5, tit. 2, ley 14.

<sup>53</sup> Zinny, *Los Gobernadores*, I. 214-215.

<sup>54</sup> V. G. Quesada, quoted by García. *La Ciudad Indiana*, pp. 195-198.

<sup>55</sup> *Revista Histórica* (Montevideo, 1910).

by words, suggested also by the lively desire to find in all phases of history the holy germs of democracy."<sup>56</sup> While admitting that the *cabildo abierto* was sometimes held to deal with important matters, he states that in general it was convened in order that the people should receive the orders of the government, not to deliberate over policy. Often it was limited to a few people, and frequently the occasion for it was the reception of a new governor or news of an additional tax.<sup>57</sup>

Important changes followed the creation of the office of *intendente* and the promulgation of the famous *ordenanza* of 1782. Viceroys and intendants tended to absorb the powers of the *cabildo*. Such important powers as the control and administration of the *propios*, cleaning of streets, inspection of public buildings, the fixing of prices, the control of the police, and the administration of local justice tended to pass into the hands of the intendant or his *asesor letrado*. There were many bitter complaints, for the new officials invaded powers not only, but failed to show respect for the ceremonials prescribed in the old system.<sup>58</sup>

What is to be said of the truth involved in these alternate positions? It would be trite, perhaps, to observe that there is truth on both sides. Take the charge of Dr. José M. Ramos Mejía that the *cabildos* promoted anarchy and instilled the spirit of rebellion. "Detras del Cabildo comienza á diseñarse la muchedumbre. El tumulto substituye al voto, el tropel al paso tranquilo y firme del Adelantado ó del Preboste; . . .".<sup>59</sup> Yet it is certainly true that the *cabildos* were often more loyal than the royal officials and on some occasions in Buenos Aires, Corrientes, and Asunción stood squarely for the law. On the other hand, take the claim that they were representative bodies.

<sup>56</sup> García, *op. cit.*, p. 199.

<sup>57</sup> In 1575, at Santiago de Chile, a *cabildo abierto* was convened to adopt measures to prevent bulls from escaping from the pens where they were awaiting the time of the bull fights. On the other hand *cf.* report on *cabildo abierto* in Buenos Aires, 1615, *Acuerdos*, t. 3, 200. For that of 1633, *cf.* Del Valle, *op. cit.*, 36-39.

<sup>58</sup> Mitre, *Historia de Belgrano*, L. V. López, *Lecciones de historia argentina*, J. M. Estrada, *Lecciones de Historia Argentina*.

<sup>59</sup> J. M. Ramos Mejía, *Las Multitudes Argentinas*, p. 49.



Unless one indulges in the subtleties of "virtual representation", this idea does not merit serious attention. Yet in the *cabildo abierto*, there was the possibility that the cabildo might receive the mandate of the people. On the question of the strength or weakness of the institution, again, there seems evidence of a conflicting import, with weakness the normal fact and strength the unusual circumstance and a matter of potential development. The divergence of thought on this institution suggests, further, as has so often been the case in history and political controversy, the use of the colonial cabildo on one or the other side in the rival philosophies of federalism and unitary consolidation, these being present, perhaps, eternal issues. In the opinion of the writer, the cabildo has had in some countries the positive influence for federalism claimed by some of its apologists. Yet for the federalist, there is the problem, so keenly appreciated by the great philosopher Alberdi, of transferring the vitality, the local loyalties, and the highly complex social functions and relations from the city where during the colonial period they seemed real to the province or republican "state" where they are artificial. This, like much of the rest, is based upon too slight a research for conclusive demonstration. With respect to the colonial cabildo, the following are offered as tentative impressions: First, that many writers have over-emphasized the representative elements in the composition of the cabildo and, further, that many of the instances cited by apologists of the institution as examples of demonstrable strength were accidental and circumstantial rather than evidences of powers inherent. Secondly, that some of the sociologists by emphasizing the real social and economic activities of the cabildo have imputed perhaps too great political powers to it. Thirdly, the critics by dwelling on the weaknesses have seemed to leave too much out of consideration the potential powers.

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